

EXHIBIT 4

1 CONFIDENTIAL - LOREN K. SMITH, Ph.D.

2 UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

3 INDEX NO. 1:24-cv-03109

4 FEDERAL TRADE :

COMMISSION, :

5 Plaintiff :

6 v. :

7 Tapestry, Inc., and :

CAPRI HOLDINGS LIMITED, :

8 Defendants. :

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10 VIDEOTAPE DEPOSITION VIA ZOOM OF:

11 LOREN K. SMITH, Ph.D.

12 TUESDAY, AUGUST 20, 2024

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24 REPORTED BY:

SILVIA P. WAGE, CCR, CRR, RPR

25 JOB NO. 6860597

1 CONFIDENTIAL - LOREN K. SMITH, Ph.D.

2 MR. LOWDON: Objection to
3 form.

4 A. I'm not recalling that
5 testimony, as I sit here right now. I
6 may have read it and just not -- and I'm
7 just not recalling it now. But if you
8 want me to look at someone's testimony, I
9 can do that.

10 Q. If you don't recall having
11 seen it, we can move on from there.

12 You conducted a hypothetical
13 monopolist test in the course of your
14 work in this case, didn't you?

15 A. I did, yes.

16 Q. Your hypothetical monopolist
17 test used as one of its inputs the
18 diversion ratios that you calculated from
19 the 2021 and 2022 Kantar and Bain surveys
20 we've been talking about, right?

21 A. That's correct. The diversion
22 ratio estimates that are used in the
23 quantitative assessment of the
24 hypothetical monopolist test rely on the
25 surveys.

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2 case; is that right?

3 A. I did.

4 Q. And your merger simulation
5 model, also, relies on the diversion
6 ratios that you calculated from those
7 2021 and 2022 Bain and Kantar surveys,
8 right?

9 A. Yeah, it relies on -- the
10 merger simulation relies on a number of
11 data points. We can go -- I can just --
12 because it does rely on a large number,
13 I'd feel more comfortable if we looked at
14 the write up on that in the appendix.
15 But I believe the diversion ratios that
16 -- are one quantitative metric that goes
17 into -- yeah, they are, one quantitative
18 metric that goes into that merger
19 simulation.

20 Q. Why don't we turn to
21 Paragraph 311 of your report.

22 A. Yeah, I'm there.

23 Q. And you describe diversion
24 ratios as one of the "key data points"
25 into your model, correct?

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2 certain metrics like prices and other
3 things at the silhouette level. I don't
4 recall off the top of my head whether any
5 of that had anything to do with surveys,
6 but may not specifically.

7 But I have -- what I have seen
8 mostly with the surveys is about brand
9 consideration.

10 Q. Yeah.

11 In fact, the name of the survey
12 within Tapestry is a "Brand Health
13 Tracker," isn't it?

14 A. I've heard them refer to that
15 as that, yes.

16 Q. Now, when we were talking
17 about a definition of a "diversion ratio,"
18 it talked about switching from one
19 product to another in response to a price
20 change.

21 Do you recall that?

22 A. I do.

23 Q. But the surveys that you
24 relied upon to calculate your diversion
25 ratios don't ask respondents what they

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2 would switch to in response to a price
3 increase, do they?

4 A. Not explicitly. Again, I
5 think it's -- I think there is information
6 in what they chose to buy and the brands
7 they considered alternatively on price.

8 They don't explicitly ask the
9 question, what would you do in response
10 to a price change.

11 Q. Right.

12 They're not in the surveys asked
13 about switching at all, much less in
14 response to a price change, right?

15 MR. LOWDON: Objection to
16 form.

17 A. These are people who bought a
18 handbag. They're asked, specifically,
19 what they were -- the other brands that
20 they considered when they bought that
21 handbag. I think that's a useful proxy
22 for diversion ratio.

23 Implicitly it says something about
24 likely responses to price changes. But
25 it doesn't explicitly say anything about

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2 changes in price.

3 Q. Yeah.

4 When you say, "not explicitly," the
5 questions as written do not ask about
6 switching from one product to another or
7 about switching in response to a change
8 in price, correct?

9 MR. LOWDON: Objection to
10 form.

11 A. Again, I just think that it's
12 important to know that implicit in the
13 consideration is information on price and
14 brands they are considering when they
15 made a purchase, which is a useful proxy
16 of diversion.

17 So, implicitly, it would be
18 approximating the answer to the question
19 of what would you do in response to a
20 small price change. It doesn't ask that
21 question directly.

22 Q. Can you direct me to any
23 economic authority -- and, again, for
24 these purposes, I will include the Merger
25 Guidelines -- that says it is appropriate

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2 considerations at the time they made
3 their last purchase.

4 Your know that, right?

5 A. Yes. The question asked,
6 what other brands did they consider when
7 they made their last purchase.

8 Q. And some of that data we know
9 goes back -- I guess, two of the four
10 surveys are from 2021, correct?

11 A. Yeah, the surveys that I rely
12 on that have that question, which is a
13 good proxy for diversion, are from, as I
14 think we discussed earlier, 2021 through
15 2022.

16 Q. Yeah, two of the four took
17 place in 2021, didn't they?

18 A. That's right.

19 Q. So the fact that a consumer
20 considered a brand when making its last
21 purchase doesn't mean that that consumer
22 would switch to that brand a year later
23 or more, in the event of a price increase
24 in the brand that it bought, does it?

25 MR. LOWDON: Objection to

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2 form.

3 A. I think it is an indication
4 of when they purchased a certain brand of
5 handbag what they considered when they
6 purchased it. I don't have reason to
7 believe that if faced with the same
8 question a year later, the answer would
9 be different.

10 So I think it is information on
11 that question a year later and I don't
12 have reason to believe that the answer
13 would be different.

14 Q. And, again, you don't know
15 whether, for example, if someone who
16 responded to the survey said they
17 considered Michael Kors at the time they
18 purchased Coach, whether they came away
19 from that experience, after considering
20 Michael Kors, deciding that they didn't
21 have a positive impression of Michael
22 Kors, do you?

23 A. No, I have no reason to
24 believe they have a negative or -- it's
25 just the information that's in the survey

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2 is who they considered and that is
3 indicative of -- it's a good proxy for
4 diversion. It's -- there's not more
5 information than that.

6 Q. I agree, "there's not more
7 information than that."

8 So you don't know one way or the
9 other whether anybody had a positive or
10 negative impression about any other brand
11 that they listed as a brand survey in
12 response -- a brand considered, rather,
13 in response to these surveys, because the
14 survey never asked them that; isn't that
15 right?

16 A. Not as a survey expert.
17 Logically, it would -- again, I think
18 it's indicative of a diversion ratio,
19 meaning, that I think that the -- what
20 they considered is a good proxy for what
21 their next best option was, yeah.

22 Q. And, again, it doesn't in the
23 surveys ask them what they thought their
24 next best option was, it asked them for
25 the various brands that they considered

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2 before they made the purchase that they
3 made.

4 We can agree on that, right, sir?

5 MR. LOWDON: Objection to
6 form.

7 A. I'm sorry, I'm going to need
8 that one read back. Apologies.

9 Q. Sure.

10 The surveys don't ask consumers
11 what they considered their next best
12 option.

13 It asks them for a list of all the
14 other brands that they considered when
15 they made their last handbag purchase;
16 isn't that right, sir?

17 A. Right. The information was
18 gathered in the ordinary course of
19 business for Tapestry for their use.
20 They asked about what are the brands they
21 considered and Tapestry, actually, uses
22 that information to put together things
23 like consideration sets, which indicate
24 they think that that information is
25 important to their consideration of their

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2 brand and competition their brand is
3 facing.

4 Q. You used the present tense
5 when you said that, sir, I noticed.

6 In fact, you know that since 2022,
7 the Brand Health Trackers no longer ask
8 this question and Tapestry, in fact, no
9 longer does what you just said in the
10 present tense it does; isn't that correct,
11 sir?

12 A. Right. Yeah, they removed
13 this question that is a good proxy for
14 diversion ratios in the more recent
15 surveys.

16 Q. Now, again, if Tapestry
17 thought it was a such a good proxy for
18 diversion ratios, why would they have
19 stopped using it in June of 2022?

20 MR. LOWDON: Objection to
21 form.

22 A. I don't know. I'd be
23 speculating if I -- as to why they
24 switched the question.

25 Q. And, certainly, we can agree

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2 that Tapestry never used the information
3 from these surveys to do its own form of
4 diversion analysis, right?

5 A. You know, I am not sure that
6 in all of my time in doing competition
7 economics in any industry that I've seen
8 a company compute a diversion ratio. The
9 -- what they do by putting together
10 consideration sets and highlighting
11 certain brands as being in those
12 consideration sets, having charts that
13 show the three parties as each other's
14 top considered alternative is a
15 reflection of -- you know, it's about as
16 close as you see to diversion ratios in
17 the ordinary course business document, in
18 my experience.


19 Q. And, again, you're not in
20 that course referring to any non-public
21 cases that you worked on that you can't
22 tell us about?

23 A. I worked on -- I mean,
24 Counsel, I've -- my experience in merger
25 litigations is a very small fraction of

1 CERTIFICATE OF REPORTER

2 I, SILVIA P. WAGE, CSR, CRR, RPR,
3 hereby certify that the witness in the
4 foregoing deposition was by me duly sworn
5 to tell the whole truth, nothing but the
6 truth; said deposition was taken down in
7 shorthand by me, a disinterested person,
8 at the time and place therein stated. The
9 testimony of said witness was thereafter
10 reduced to typewriting by computer under
11 my direction and supervision. Before
12 completion of the deposition, review of
13 the transcript [X] was [] was not
14 requested. If requested, any changes
15 made by the deponent (and provided to
16 the reporter) during the period allowed
17 are appended hereto.

18 I further certify that I am not of
19 counsel or attorney for either or any
20 of the parties to the said deposition,
21 nor in any way interested in the event
22 of this cause, and that I am not
23 related to any of the parties thereto.

24 
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8/21/24